


Office of the City Manager

July 9, 2014

To: Honorable Mayor and Councilmembers

From: Christine Daniel, City Manager 

Subject: Response to Mason Tillman Associates Report

As you aware, the City hired Mason Tillman and Associates (MTA) to conduct interviews with individuals who expressed concerns to the NAACP about the City's hiring and promotional practices and the City's complaint investigation process. The purpose of this memorandum is to provide Council with the staff response to the recommendations made by MTA in their final report, entitled: *"Top Line Report of NAACP Complainant Interviews."* Staff carefully analyzed the report and developed an action plan to carry out many of the suggested recommendations. The Personnel Board reviewed the MTA report and provided feedback to staff on the proposed action plan. The Personnel Board will monitor our progress on achieving outcomes identified in the plan.

The MTA recommendations center on a desire for greater transparency, communication and education in regard to the City's hiring and complaint investigation processes. The report proposes an audit of the Human Resources Department to evaluate "strict adherence to equal employment opportunity rules, protection from retaliation for complainants as well as adherence to the City of Berkeley's personnel policies and procedures."¹ The report also strongly encourages the City to "address the perceptions that there is an absence of transparency in the hiring and promotion process, a failure to hold supervisors and managers, and directors accountable for their actions, and inconsistent application of rules and regulations in the hiring and promotion process."² Finally, the report indicates that complainants who articulated these concerns "associate them with disparate treatment, discrimination and retaliation" which "negatively affect morale and trust between employees and the City of Berkeley."³

¹ Mason Tillman and Associates, LTD, Report entitled: "Top-Line Report of NAACP Complainant Interviews" May 2014, page 34;

² Mason Tillman Report, May 2014, page 34

³ Mason Tillman Report, May 2014, page 34

The MTA report has enabled the City to identify and better understand perceptions that exist among the complainants who were interviewed. While the City's processes are intentionally designed to promote transparency, reinforce accountability of all staff (including managers and supervisors), and consistently and fairly apply the rules and regulations in the hiring and promotion process, the MTA report serves as a reminder that there is more we can do to achieve and communicate these outcomes. The City endeavors to foster high employee morale and trust between employees and the organization. The report and recommendations create an important opportunity to review the City's policies and processes and make improvements where appropriate. City management is deeply committed to addressing the perceptions, and the associated organizational issues, outlined in the MTA report.

While the City is unable to respond to specific statements made in the report due to the anonymity of the complainants and the confidential nature of personnel matters, the report has provided sufficient information to create the following action plan that will address many of the concerns raised in the report.

ACTION PLAN

1. Human Resources Department Audit

Staff agrees that an audit would be a valuable instrument to assess our practices and ensure compliance with the merit-based recruitment and hiring system. The City Auditor has included an audit in the Fiscal Year 2015 work plan for the purpose of evaluating the Human Resources Department's application of the merit-based hiring system, as well as its adherence to equal employment opportunity laws and policies.

2. Training

While the merit-based hiring system is administered by the Human Resources Department, applicants are interviewed and selected for employment opportunities by supervisors and managers within the City's operating departments. This creates the potential for variations in administering these duties. In order to ensure a high degree of consistency, staff will develop a training course designed to 1) increase supervisors' and managers' understanding of the merit-based hiring system, 2) provide specific instruction on personnel rules pertaining to employment and classification actions, and 3) convey techniques for establishing selection criteria. This has been discussed with City Department Directors who have endorsed the concept of mandatory training for all supervisors and managers involved in the hiring process. We will develop this course and require every supervisor and manager involved in the hiring process to complete the course by June 30, 2015.

In an effort to support employees in their career development goals, the City partnered with the Claremont Employee Assistant Program to produce a new two-part workshop on career development. This workshop demonstrated how to leverage experience, education, and training to achieve career goals by providing participants with instruction on resume writing and job interviewing skills. This workshop was offered for the first time in March 2014, all 23 participating employees expressed overwhelmingly positive feedback. The City plans to offer this workshop on a regular basis beginning this Fall.

3. Equal Employment Opportunity and Hiring Process Workshops

The City wants every employee to clearly understand the City's hiring and EEO investigatory processes. We will achieve this by offering workshops on EEO policies, the City's EEO Complaint Investigation and Resolution Procedures, and the hiring and promotional process. This will enable employees to become knowledgeable about the City's hiring process and how it is administered, and learn about EEO policies, understand how to initiate a complaint and how complaints are investigated. The goal of these workshops will be to provide a forum to increase understanding and improve transparency related to City processes. These workshops will also allow management staff to obtain feedback from participants on City practices and communication methods. We plan to develop and present this series of workshops by January 31, 2015, and then schedule these workshops on a regular basis thereafter. Once we obtain feedback from participants in these workshops about employee questions and concerns, the City will prepare fact sheets that explain hiring and EEO processes. These will be posted on the Human Resources Department website, distributed to all employees and provided to every new hire in the City.

4. Diversity Training

Diversity is a core and unwavering value of the City organization. Last fall, staff identified the need to develop a new training course on Understanding and Valuing Diversity as part of the Citywide Training Program. The course is currently under development and our Training Officer is obtaining input from a variety of City staff and external sources to ensure the creation of a meaningful course. The goal is to create a context that allows participants to learn and apply strategies for increasing diversity awareness and interacting effectively in a diverse workforce. Initial sessions of this course are scheduled to be offered to employees in the Winter.

As we learn more about current employee perceptions and needs, and gain additional experience with communication methods that result in increased employee understanding and awareness, we will develop a "continuous improvement cycle" in which we consistently evaluate the methods we employ and make improvements that result in achieving our desired outcomes.

MTA REPORT FINDINGS RELATED TO PERSONNEL POLICIES AND PROCEDURES

The MTA report contains numerous anonymous statements and recommendations in a variety of subject areas. The methodology used in preparing the report included interviews with 20 individuals, a review of the City's Personnel Rules and Regulations, and Title 4 – Personnel – of the Municipal Code. However, a substantial number of the City's personnel procedures are included in the union contracts. This differs significantly from other cities in which all rules are located in civil service or personnel rules. Given the breadth of documents that comprise the City's personnel procedures, there are a variety of source documents such as union contracts, Berkeley Matters newsletter, and Personnel Board agendas and minutes that were not reviewed as part of MTA's data-gathering methodology. As a result, the MTA report does not sufficiently describe the extensive personnel procedures and practices undertaken by the City. The following section explains the City's existing practices,

many of which are overseen by the Personnel Board. An addendum to this document contains links to City websites and records that provide examples of the publicly accessible rules pertaining to the City's existing practices.

Classification

MTA Recommendation 1

Require the Personnel Board to review revisions to class specifications and the classification plan, and make recommendations to the City Manager.

MTA Recommendation 2

Increase transparency by offering public hearings prior to adoption of personnel rules and classification plans.

Current City Practice

The Human Resources Department already applies the Personnel Rules and Regulations, and Municipal Code as recommended by Mason Tillman Associates. The Personnel Board is advisory to the City Manager and convenes monthly public meetings pursuant to the Brown Act. All Personnel Board agendas are published in advance of the meeting and uploaded onto the Board's website. A paper copy is also physically posted at required posting locations in the City. Minutes of the meetings are published on the Board's website. As a matter of routine, staff forward proposed classification actions to applicable unions, then meet and confer over the impact of classification actions pursuant to the Meyers-Milias-Brown Act, and adhere to provisions in the various union contracts prior to transmitting the proposed action to the Personnel Board. New classifications, salary adjustments, and abolished classification actions are then placed on the City Council agenda for adoption by resolution. For example, since 2008 the Personnel Board has reviewed 90 classification actions. The Personnel Board considers staff recommendations, presentations by employees and union representatives; and makes substantive recommendations to classifications. Similarly, all revisions to the Personnel Rules and Regulations are approved by the Personnel Board prior to adoption by the City Council. Lastly, the union contracts contain provisions whereby employees may request an audit of their position to determine if it is assigned to the correct classification.

Compensation

MTA Recommendation

Provide transparency by enumerating salary steps of classifications and advancement between salary steps

Current City Practice

Salaries, salary steps, and length of time required to advance to the next salary step are mandatory subjects of bargaining. Therefore, provisions are negotiated with applicable unions and are contained in the union contracts rather than the Personnel Rules and Regulations. All salaries and salary steps are also listed on the Human Resources Department's website. As noted above, changes are adopted by the City Council via resolution.

Job Announcements

MTA Recommendation

The City should require *public* announcements of vacancies, examinations, and acceptance of applications of employment.

Current City Practice

The Human Resources Department ensures that proper public notifications occur with every job announcement and vacancy. Within the City, all vacancies are published in the biweekly Berkeley Matters newsletter that is made available to all staff on the intranet and is distributed with pay checks to field personnel who do not have access to a City computer. Vacant positions to be filled are listed in Berkeley Matters in order to give employees the opportunity to express interest in being considered for the position. All recruitments, are listed on the Human Resources Website, published in Berkeley Matters, and sent via email to over 270 agencies on a weekly basis. In addition, any person (staff or member of the public) can sign up to receive automatic emails when a new job recruitment is announced. The requirement to publish recruitment and vacancy information was negotiated with each union and is included in the various union contracts. The Human Resources Department receives approximately 6,500 employment applications per year.

Job Applications

MTA Recommendation

The City should consider reaching out to each applicant directly to communicate the outcome of the application.

Current City Practice

The City informs all applicants of the status of their application either by U.S. Mail or email depending on the applicant's preference. Applicants are notified about whether they meet the job requirements, invited to take examinations, given results of the examination, and informed about whether they have been placed on the eligible list (including the rating category, if applicable). Applicants can also check the status of their application online through their own account.

Examinations

MTA Recommendation

Personnel Rule 6.03 allows overbroad discretion to the HR Director to determine selection techniques; selection criteria should be clearly stated on both the examination announcements and application forms.

City's Current Practice

The Human Resources Department conducts open competitive and promotional examinations in order to establish eligible lists of candidates who qualify for appointment or promotion based on candidates' demonstrated abilities. All job classifications and job announcements include the knowledge, skills and abilities needed to perform the functions of the job, which are the criteria used in assessments such as training and experience ratings, written and performance tests, and interviews. The Human Resources Department conducts a job analysis in accordance with the EEOC Uniform Guidelines on Employee Selection,

which provides a framework for determining the proper use of tests and other screening and selection procedures used in employment decisions. A job analysis identifies critical knowledge, skills and abilities; and links them to the essential job tasks to ensure that examination assessment components are valid.

Promotions

MTA Report Observation

There are perceptions of barriers to promotions for employees of color.

City's Promotional History

The Human Resources Department posts all open-competitive recruitments, promotional-only recruitments, and vacancies to be filled in the Berkeley Matters Newsletter. There have been 177 promotions since January 1, 2011, and 98 (55.4%) of those promotions were employees of color.

Seniority Rights

MTA Recommendation

The City is encouraged to determine a transparent and uniform definition of seniority to avoid inconsistent application of seniority rights.

City's Current Practice

There appears to be some confusion regarding seniority and the application of seniority rights. Seniority is a critical element in the application of the Layoff Procedures contained in the union contracts, which have specific definitions of seniority service credit. Conversely, seniority has never been a primary or sole criterion for promotion. Promotions are based on a variety of factors that include work performance, training and experience, merit, ability, and seniority.

Grievance and Discipline Appeals

MTA Recommendation 1

City Council must ensure adoption of a Grievance Process ASAP.

MTA Recommendation 2

Hearings are recommended to provide due process.

City's Current Practice

Grievance and disciplinary appeals are detailed in the union contracts rather than the Personnel Rules and Regulations. City staff and the unions work collaboratively to ensure grievances and disciplinary actions are processed in accordance with the union contracts. This is separate and distinct from the EEO Complaint Investigation and Resolution Process. A Labor Relations Coordinating Committee (LRCC) reviews and approves proposed disciplinary actions before a manager initiates discipline against an employee. The LRCC is staffed by the City Attorney's Office and the Human Resources Department, which both ensure that employees' due process rights are protected.

Equal Employment Opportunity Program

MTA Recommendation 1

Personnel Rules should clearly outline an accessible method to discuss concerns with the EEO Officer.

MTA Recommendation 2

Consider reinstating the reporting requirements in the City's EEO Program.

Current City Practice

The City has a variety of written Equal Employment Opportunity Policies and Procedures that are contained in union contracts and are posted on the Human Resources Department's internet and intranet websites. These include: Equal Opportunity Employment Policy, Harassment Prevention Policy, and EEO Complaint Investigation and Resolution Procedure. The latter provides for internal EEO complaints to be filed with the EEO & Diversity Officer, which are investigated separately from complaints filed in the Grievance Procedures. In addition to formal complaints, it has been common for employees to contact the EEO & Diversity Officer informally to discuss workplace issues and seek advice and assistance in their resolution. The EEO & Diversity Officer prepares bi-annual workforce reports analyzing turnover, promotions, and new appointments by race and gender. The workforce report also presents a comparison of the City's workforce to the relevant labor market using the eight EEOC job categories. These reports are sent to Council, shared with Department Directors, and the Personnel Board thoroughly reviews the report annually. We have not found another City in the Northern California region that performs this level of analysis of its workforce and reviews it publicly with a Civil Service Commission or Personnel Board in the manner that we do in Berkeley.

Nepotism

MTA Observation:

The report cited perceptions of nepotism in the hiring process, and suggested steps be taken to avoid nepotism.

City Policy:

The City has a written Policy for Employment of Near Relatives (Administrative Regulation 2.12), to prevent nepotism in promotion and hiring actions and to ensure that merit is the basis for employee selection. The Alameda County Grand Jury reviewed the subject of nepotism in its 2012-13 annual report and concluded, "Berkeley's nepotism policy is succinct and clearly written. Berkeley is the only city in Alameda County that requires written approval before the hiring of near relatives. The Grand Jury suggests that Berkeley's anti-nepotism policy be used as a model by Alameda County and other cities within the county."

cc: William Rogers, Deputy City Manager
Ann-Marie Hogan, City Auditor
City Department Directors
Matthai Chakko, Public Information Officer

REFERENCES

Below is a listing of City websites and reference documents containing information that supplements references in this staff report.

Subject	Reference
Classification	<p>Personnel Board webpage (agendas & minutes) http://www.cityofberkeley.info/Clerk/Commissions/Commissions_Personnel_Board_Homepage.aspx</p> <p>SEIU Local 1021 MOU excerpt (Classification sec. 11.9 – 11.11) http://www.cityofberkeley.info/uploadedFiles/Human_Resources/Level_3_-_General/MOUforSEIULocal1021CommSvcsandPTRLA.pdf#page=28</p> <p>PEU Local One MOU excerpt (Classification sec 14.3 – 14.5) http://www.cityofberkeley.info/uploadedFiles/Human_Resources/Level_3_-_General/PEULocal1MOU.pdf#page=23</p>
Compensation	<p>Human Resources Department webpage (Salaries) http://www.cityofberkeley.info/ContentDisplay.aspx?id=10792</p>
Job Announcements	<p>Berkeley Matters Newsletter (examples of recruitment and vacancy listings) www.cityofberkeley.info/uploadedFiles/Human_Resources/Home/NAACP2014/BMNewsletterExampleIssues2014.pdf</p> <p>Human Resources Department webpage (Recruitment Announcements) http://agency.governmentjobs.com/berkeley/default.cfm</p> <p>List of Agencies receiving recruitment announcements www.cityofberkeley.info/uploadedFiles/Human_Resources/Home/NAACP2014/JobBulletinMailingListMay2014.pdf</p>
Job Applications	<p>Examples of notices sent to job applicants www.cityofberkeley.info/uploadedFiles/Human_Resources/Home/NAACP2014/ExampleNotificationsToApplicants.pdf</p>
Seniority Rights	<p>Human Resources Department webpage for links to Union contracts (each contract has a Layoff Procedure that defines seniority and layoff provisions) http://www.cityofberkeley.info/ContentDisplay.aspx?id=8356</p>
Grievance and Disciplinary Process	<p>Human Resources Department webpage for links to Union contracts (each contract has a Grievance and Discipline process and appeal procedure) http://www.cityofberkeley.info/ContentDisplay.aspx?id=8356</p>
Equal Employment Opportunity	<p>Link to previous EEO Workforce Reports prepared by the Human Resources Department www.cityofberkeley.info/uploadedFiles/Human_Resources/Home/NAACP2014/WorkForceReports.pdf</p>
Nepotism	<p>City of Berkeley Policy on Employment of Near Relatives www.cityofberkeley.info/uploadedFiles/Human_Resources/Home/NAACP2014/NearRelativesPolicyAR2.12.pdf</p> <p>2012-13 Alameda County Grand Jury Report (Page 54 references City of Berkeley's Policy) http://www.acgov.org/grandjury/final2012-2013.pdf#page=54</p>